IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPLICATION NO.259 OF 1999

The Commissioner of Income tax ..Petitioner.

V/s.

American Express Bank Ltd. ..Respondent.

Mr.B.M.Chatterji with Ms.P.P.Bhosle for petitioner.

None for respondent.

CORAM : DR. S.RADHAKRISHNAN AND J.P.DEVADHAR, JJ.

DATED : 6TH MARCH, 2007.

P.C. :-

. Heard the learned counsel for the petitioner. The above application was admitted on the following substantial questions of law :-

1. Whether on the facts and in the circumstances of the case, the Tribunal was justified in law and on facts in coming to the conclusion that the revenue authorities had no jurisdiction u/s. 201 of the Income-tax Act, 1961 to demand further tax from the assessee employer in respect of short deduction of tax made in respect of (1) reimbursement of driver’s salary (2) reimbursement of servant’s salary (3) wrong claim of full standard deduction to employees wherever is provided for use otherwise than wholly and exclusively in performance of official duties (5) payment of education allowance (6) reimbusement of lodging and boarding expenses of expatriates ?

2. Whether on the facts and in the circumstances of the case, the Tribunal was justified in law and in facts in coming to the conclusion that the estimate of income of the employees of assessee company made by the assessee employer U/s.192

(1) of the I.T.Act was honest and bonafide without appreciating the fact that the provisions of section 192(1) emphasise the income tax to be deducted at source by any person responsible for "paying any income chargeable under the head ‘Salaries’ shall at the time of payment, deduct income tax on the amount payable" and as such the members of the Tribunal erred in law and in facts in attributing more emphasis on the estimate made by the assessee instead of laying emphasis on the income chargeable under the head ‘salaries’?

3. Whether on the facts and in the circumstances of the case, the Tribunal was justified in law and in facts in interpreting the provisions of section 192(1) and 201(1) of the I.T. Act on the basis of the estimate of income of the employees made by the assessee and holding the said estimate at honest and bonafide without appreciating the fact that the provisions of section 192(1) and 201(1) are mandatory charging provisions for tax to be deducted at source in respect of income chargeable under the head "salaries" u/s. 17 of the I.T. Act and as such the Tribunal failed to appreciate that revenue authorities were well within their powers for collecting the short deduction of tax made by employer u/s.201 (1) of the Income Tax Act ?

2. The application pertains to the assessment year 1987-88.

3. In the above application the tax liablity is Rs.1,54,842/- and in view of the Revenue Circular dated 27th March, 2000 as the tax effect is below Rs.2 lakhs, Rule stands discharged.

4. Application is dismissed.

(DR.S.RADHAKRISHNAN, J.)

(J.P. DEVADHAR, J.)